

February 10, 1852, are hereby relinquished to the Colonists, their heirs and assigns.

SEC. 2. That all surveys and field-notes duly made and returned, and all such as shall hereafter be duly made and returned by virtue of such certificates as are mentioned in the first section of this act, together with such certificates, shall have the effect of vesting complete title to the land in the Colonists legally holding the same, their heirs and assigns; and all locations which have been or may hereafter be made by any Colonists, their heirs or assigns, by the number of the section or parts of section, township and range, base and meridian, as provided for in the fourth section of said act of February 10, 1852, shall also have the effect of vesting complete title to the lands in the Colonists, so soon as they shall return to the General Landoffice such locations or designations, together with their said certificates.

SEC. 3. That the Commissioner of the General Landoffice shall issue patents on said lands as in other cases.

SEC. 4. That this act shall take effect from and after its passage.

Approved, February 8, 1854.

---

## CHAPTER XLIX.

*An Act supplemental to "An Act concerning Crimes and Punishments," approved March twentieth, A. D., eighteen hundred and forty-eight.*

### OFFENCES AGAINST THE PERSON.

SECTION 1. Be it enacted by the Legislature of the State of Texas, If any person, with the intent to procure the miscarriage of any woman being with child, unlawfully and maliciously shall administer to her or cause to be taken by her any poison or other noxious thing, or shall use any instrument or any means whatever, with like intent, every such offender, and every person counselling or aiding or abetting such offender, shall be punished by confinement to hard labor in the Penitentiary not exceeding ten years.

SEC. 2. Upon all indictments for murder or manslaughter, if it shall be found by the verdict of the jury that the party indicted killed the person for whose death he is indicted in the lawful defence of himself, his family or servants or master, or happened to kill such person in attempting to arrest by lawful means the person killed, for treason or other felony or misdemeanor, or in the lawful discharge of any duty required by law, or that he not being engaged at the time in the commission of any offence punishable by fine or imprisonment, or by confinement to hard labor in the Penitentiary, killed such person by misfortune or accident, then and in that case the party indicted shall be fully acquitted and discharged.

SEC. 3. If any person shall, either verbally or by any written or printed communication, maliciously threaten to accuse another of any crime or offence, or shall by any written or printed communication, maliciously threaten any injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or with the intent to compel the person so threatened to do any act against his will, he shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than five years, or by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding one year.

SEC. 4. Every person who shall unlawfully sell any free person for a slave, or hold any free person as a slave against his will, knowing the person so sold or held to be free, shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not exceeding one year.

SEC. 5. If any person shall mingle any poison with any drink, food or medicine, with intent to kill or injure any other person, or shall wilfully poison any spring, well, cistern or reservoir of water with such intent, he shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than ten years.

SEC. 6. Murder or manslaughter committed upon the body of a slave shall be punished in the same manner as murder or manslaughter committed upon the body of a free white person.

#### OF OFFENCES AGAINST PRIVATE PROPERTY.

SEC. 7. If any person who shall have committed an offence in any foreign country, State or Territory, which, if committed in this State would be robbery, larceny, or receiving of stolen

property, knowing the same to have been stolen, shall bring the property within this State, he shall be deemed guilty of robbery, larceny, or receiving of stolen property knowing the same to have been stolen, as the case may be, in this State, and shall be punished accordingly; and the receiver of any such property in this State, knowing the same to have been so robbed or stolen, shall be punished in the same manner as in other cases of receivers of stolen property.

SEC. 8. Every person who shall wilfully burn any building or any goods, wares, merchandise or other chattels, which shall be at the time insured against loss or damage by fire, with intent to injure the insurer, whether such person be the owner of the property burnt or not, shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than seven years.

SEC. 9. The officer who shall arrest any person charged as principal or accessory in any robbery or larceny, shall secure the property alleged to be stolen, and shall be answerable for the same, and he shall annex a schedule thereof to his return, and upon conviction of the offender, the stolen property shall be restored to the owner.

SEC. 10. If any public officer or agent, being a receiver of public money under any law of this State, or clerk or other person employed in the office of any officer of this State who shall be a receiver of public money, shall embezzle or fraudulently misapply or convert the same to his own use, or take or secrete with intent to embezzle or convert to his own use, any money of the State which shall have come to his possession or shall be under his care by virtue of such office, agency or employment, or shall pay or deliver the same to any person, knowing that such person is not entitled to receive the same, he shall be punished by confinement to hard labor in the Penitentiary not less than two years nor more than ten years.

SEC. 11. That if any officer, agent or clerk of any incorporated company or institution, or of any city, town or county, or if any clerk or agent of any private person or copartnership, except apprentices and persons under the age of sixteen years, shall embezzle or fraudulently misapply or convert to his own use, or shall take or secrete with intent to embezzle or convert to his own use, without consent of his principal or employer, any money or property of another which shall have come to his possession or shall be under his care by virtue of such office, agency or employment, he shall be deemed, by so doing, to

have committed the crime of larceny, and shall be punished accordingly.

SEC. 12. If any person shall receive or conceal any money or property embezzled as described in the two preceeding sections, knowing the same to have been so embezzled, he shall be punished in the same manner as the person embezzling the same.

SEC. 13. If any carrier or other person to whom any money, goods or other property, which may be the subject of larceny, shall have been delivered to be carried for hire, or if any other person who shall be entrusted with such property, shall embezzle or fraudulently convert to his own use, or shall secrete with intent to embezzle or fraudulently convert to his own use any such money, goods or property either in the mass, as the same were delivered, or otherwise, and before the delivery of such money, goods or property at the place at which or to the person to whom they were to be delivered, he shall be deemed by so doing to have committed the crime of larceny, and shall be punished according to the value of the said money, goods or other property.

SEC. 14. Every person who shall falsely personate or represent another, and in such assumed character shall receive any money or other property whatever, intended to be delivered to the party so personated, with intent to convert the same to his own use, shall be deemed by so doing to have committed the crime of larceny, and shall be punished accordingly.

SEC. 15. If any person shall designedly, by any false pretence or by any privy or false token, and with intent to defraud, obtain from any person any money, or any goods, wares, merchandise or other property, or shall obtain with like intent the signature of any person to any written instrument, the false making whereof would be punishable as forgery, he shall be punished by confinement to hard labor in the Penitentiary not more than five years, or by fine not exceeding one thousand dollars, and by imprisonment in the county jail not exceeding one year.

SEC. 16. If any person shall wilfully cast away, burn, sink or otherwise destroy any ship or vessel within the body of any county, with the intent to injure or defraud any owner of such ship or vessel, or the owner of any property laden on board of the same, or any insurer of such ship, or vessel or property, or any part thereof, he shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than seven years.

SEC. 17. Every person who shall mark or brand any horse, gelding, mare or colt, mule, ass, neat cattle, sheep, hog or goat, not being his own property and without the consent of the owner, and with intent to defraud, shall be punished by fine, not exceeding fifty dollars, or by imprisonment in the county jail not exceeding six months.

SEC. 18. Every person who shall alter or deface the mark or brand of any horse, gelding, mare or colt, mule, ass, neat cattle, sheep, hog or goat, not being his own property, without the consent of the owner and with intent to defraud, shall be punished by fine not exceeding one hundred dollars, and imprisonment in the county jail not exceeding one year.

SEC. 19. Every person who shall cut, fell, alter or remove, or cause to be cut, fell, altered or removed, any boundary tree or other allowed land-mark, knowing the same to be such, shall be punished by fine not exceeding one hundred dollars and imprisonment in the county jail not exceeding one year.

SEC. 20. If any person hath given or shall hereafter give any mortgage, deed of trust or other lein in writing upon any personal or moveable property, and shall remove the same or any part thereof from this State, or shall sell or otherwise dispose thereof, while the same remains in this State, with intent to defraud, he shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than five years.

SEC. 21. If any person shall fraudulently pass or transfer, or offer to pass or transfer any paper purporting to be bank paper, and to be issued by any bank which has never existed, or which having existed shall have since broken, with intent that any person shall be defrauded thereby, he shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than five years.

SEC. 22. That if any person shall intentionally injure, break, cut, pull or tear down, or in any way misplace any telegraph wire, post, machinery or other necessary appurtenances to any telegraph line in this State, or in any way wilfully obstruct or interfere with the transmission of messages along any such telegraph line, he shall be punished by confinement to hard labor in the Penitentiary not less than two, nor more than ten years, or by imprisonment in the common jail not more than one year, and by fine not exceeding two thousand dollars.

#### OF FORGERY AND COUNTERFEITING.

SEC. 23. In any case where an intent to defraud is required

to constitute the offence of forgery, or any other offence that may be prosecuted, it shall be sufficient to alledge in the indictment an intent to defraud, without naming therein the particular person or body corporate intended to be defrauded; and on the trial of such indictment, it shall be sufficient, and shall not be deemed a variance, if there appear to be an intent to defraud the United States or any State, county, city, town or any body corporate, or any public officer in his official capacity, or any copartnership or member thereof, or any particular person.

### OF OFFENCES AGAINST PUBLIC JUSTICE.

SEC. 24. Whenever it shall appear to any Court that any witness or party who has been legally sworn and examined, or has made an affidavit in any proceeding in a court of justice, has testified in such a manner as to induce a reasonable presumption that he has been guilty of perjury therein, the Court may immediately commit such witness or party by an order or process for that purpose, unless such witness or party enter into recognizance, with sureties, for his appearance to answer to an indictment for perjury, and thereupon the witness to establish such perjury, may, if present, be bound over to the proper Court, and notice of the proceedings shall forthwith be given to the District Attorney

SEC. 25. If in any proceedings in a court of justice in which perjury or forgery shall be reasonably presumed, any papers, books or documents shall have been produced, which shall be deemed necessary to be used in any prosecution for such perjury or forgery, the court may by order detain the same from the person producing them, so long as may be necessary in order to their being used in such prosecutions.

SEC. 26. Every person who shall corruptly give, offer or promise to any Executive, Legislative or Judicial officer, after his election or appointment, and either before or after he shall have been qualified or shall have taken his seat, any gift or gratuity whatever, with intent to influence his act, vote, opinion, decision or judgment on any matter, question, cause or proceeding which may be then pending or may by law be brought before him in his official capacity, shall be punished by confinement to hard labor in the Penitentiary not exceeding five years, or by fine not exceeding three thousand dollars, and imprisonment in the county jail not exceeding one year.

SEC. 27. Every Executive, Legislative or Judicial officer, who shall corruptly accept any gift or gratuity, or any promise

to make any gift, or to do any act beneficial to said officer, under an agreement or with an understanding that his act, vote, opinion or judgment shall be done or given in any particular manner, or upon a particular side of any question, cause or proceeding which is or may be by law brought before him in his official capacity, or that in such capacity he shall make any particular nomination or appointment, shall be punished by confinement to hard labor in the Penitentiary not exceeding ten years, or by fine not exceeding five thousand dollars, and imprisonment in the county jail not exceeding two years.

SEC. 28. Every person who shall corrupt or attempt to corrupt any Auditor, Juror, Arbitrator, Umpire or Referee by giving, offering or promising any gift or gratuity whatever, with intent to bias the opinion or influence the decision of such Auditor, Juror, Arbitrator, Umpire or Referee, in relation to any cause or matter which may be pending in the Court or before an inquest or for the decision of which such Arbitrator, Umpire or Referee shall have been chosen or appointed, shall be punished by confinement to hard labor in the Penitentiary not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

SEC. 29. If any person summoned as a Juror or chosen or appointed as an Arbitrator, Umpire or Referee, or if any Auditor shall take any thing to give his verdict, award or report, or shall corruptly receive any gift or gratuity whatever from a party to any suit, cause or proceeding for the trial or decision of which such Juror shall have been summoned, or for the hearing or determination of which such Auditor, Arbitrator, Umpire or Referee shall have been chosen or appointed, he shall be punished by confinement to hard labor in the Penitentiary not more than five years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

SEC. 30. If any person having knowledge of the commission of any felony, shall take any money or gratuity or reward, or any engagement therefor upon an agreement or understanding, expressed or implied, to compound or conceal such offence, or not to prosecute therefor, or not to give evidence thereof, he shall be punished by confinement to hard labor in the Penitentiary not more than three years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

SEC. 31. If any Sheriff, Constable or other officer authorised

to serve legal process, shall receive from a defendant or any other person, any money or other valuable thing as a consideration, reward or inducement for omitting or delaying to arrest any defendant, or to carry him before a magistrate, or for delaying to take any person to prison, or for postponing the sale of any property under an execution, or for omitting or delaying to perform any duty pertaining to his office, he shall be punished by confinement to hard labor in the Penitentiary not more than three years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail not more than one year.

### OFFENCES AGAINST PUBLIC PEACE.

SEC. 32. If any two or more persons shall, within this State, conspire together, or engage with one another for the purpose of committing any murder, robbery, rape, arson, burglary or larceny in any foreign country or territory, or in any other State, such persons and each of them so offending shall be punished by confinement to hard labor in the Penitentiary not less than one, nor more than ten years.

SEC. 33. If any person shall, within this State, wilfully and feloniously discharge any gun, pistol, cannon or other fire arms, so as to kill and murder any other person in any foreign country or territory, or in any other State, he shall be punished with death, or by confinement to hard labor in the Penitentiary for any term not less than three years, at the discretion of the jury.

SEC. 34. If any person shall, within this State, make an assault with intent to commit murder upon any other person in any foreign country or territory, or in any other State, he shall be punished by confinement to hard labor in the Penitentiary not less than one nor more than ten years.

SEC. 35. Trials for all offences described in the three preceding sections shall be had in the county where the offence is committed.

SEC. 36. If any person who has a former husband or wife living, shall marry another person, or shall continue to cohabit with such second husband or wife in this State, he or she shall, except in the cases mentioned in the following section, be deemed guilty of the crime of polygamy, and shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than five years.

SEC. 37. The provisions of the preceding section shall not extend to any person whose husband or wife shall have been



continually remaining beyond sea, or shall have voluntarily withdrawn from the other and remained absent for the space of five years, the party marrying again not knowing the other to be living within that time, nor to any person who shall have been legally divorced from the bonds of matrimony.

SEC. 38. If any white person shall knowingly marry a negro, or the descendant of a negro, or being married to a negro or the descendant of a negro, shall continue to cohabit with such negro or descendant of a negro within this State, such person shall be punished by confinement to hard labor in the Penitentiary not less than one year nor more than five years.

SEC. 39. All persons being within the degrees of consanguinity or affinity in which marriages are prohibited or declared by law to be incestuous, who shall intermarry with or carnally know each other, shall, on conviction thereof, be punished by confinement to hard labor in the Penitentiary not exceeding fifteen years.

SEC. 40. If any person shall commit the abominable and detestable crime against nature, either with mankind or with any beast, he shall be punished by confinement to hard labor in the Penitentiary not exceeding five years.

#### OFFENCES AGAINST THE PUBLIC HEALTH.

SEC. 41. If any person shall knowingly sell the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, he shall be punished by fine not exceeding one hundred dollars, and imprisoned in the county jail not more than six months.

SEC. 42. If any person shall fraudulently adulterate, for the purpose of sale, any substance intended for food, or any wine, spirits or malt liquor or other liquor, intended for drinking, with any substance injurious to health, he shall be punished by fine not exceeding three hundred dollars, and by imprisonment in the county jail not exceeding one year.

SEC. 43. If any person shall fraudulently adulterate, for the purpose of sale, any drug or medicine in such a manner as to render the same injurious to health, he shall be punished by fine not exceeding five hundred dollars, and imprisonment in the county jail not more than one year.

SEC. 44. If any person shall permit any gaming table or bank for gaming to be kept or exhibited in his or her house, or shall rent a house or room for such purpose, he or she shall,

on conviction, be fined not less than one hundred nor more than five hundred dollars.

SEC. 45. That if any person shall sell, give or barter any ardent spirits, arms or ammunition to an Indian, such person shall, on conviction thereof in the District Court, be fined in a sum not less than ten nor more than one hundred dollars for each offence.

### OFFENCES AGAINST SLAVES AND SLAVE PROPERTY.

SEC. 46. If any person advise or conspire with a slave to rebel or make insurrection, or with any person to induce a slave to rebel or make insurrection, he shall be punished with death, whether such rebellion or insurrection be made or not.

SEC. 47. The master of any steamboat or other vessel who shall carry or cause to be carried out of any county a slave, without the consent of the owner or employer, with intent to deprive the owner of such slave, or who shall knowingly receive on board any runaway slave, and permit him to remain on board without proper efforts to apprehend him, shall be confined in the Penitentiary not less than two, nor more than ten years.

SEC. 48. Every person who shall steal, take and carry away or entice away any slave, the property of another, shall be punished by confinement to hard labor in the Penitentiary not less than three nor exceeding fifteen years.

SEC. 49. Every person who shall attempt to steal or entice away a slave from the owner or employer, shall be confined in the Penitentiary not less than one nor more than ten years.

SEC. 50. If a free person advise any slave to abscond from his master or employer, or aid such slave to abscond, by procuring for or delivering to him a pass or other writing, or by furnishing him money, clothes, provisions or other facility, he shall be confined in the Penitentiary not less than three nor more than five years.

SEC. 51. If any master of a vessel or other person shall knowingly import or bring into this State any slave who shall be a fugitive from justice, or shall have been sold or convicted for crime beyond the limits of this State, he shall be confined in jail not less than six months, and fined one hundred dollars.

### GENERAL PROVISIONS.

SEC. 52. If any mortal wound be given, or other violence or injury inflicted, or any poison be administered in one county

by means whereof death shall ensue in another county, the offence may be prosecuted and punished in either county.

SEC. 53. If a mortal wound be given, or other violence or injury be inflicted, or poison administered on the high seas or land, either within or without this State, by means whereof death shall ensue in any county of this State, such offence may be prosecuted and punished in the county where such death may happen.

SEC. 54. In every prosecution for writing or publishing a libel, the defendant may give in evidence in his defence, the truth of the matter contained in the writing or publication charged to be libellous. Provided, that such evidence shall not be deemed a sufficient justification, if it shall be made to appear on trial that the matter charged to be libellous was maliciously written or published.

SEC. 55. Whenever any person shall be convicted of an offence the punishment of which shall be confinement to hard labor in the Penitentiary for any term of years, and it shall have been alledged in the indictment and admitted or proved on the trial, that such convict was twice before sentenced to confinement to hard labor in the Penitentiary of this State or in some other State prison in the United States, and at each time for more than one year, he shall be punished by confinement to hard labor in the Penitentiary for the longest time prescribed for the offence of which he shall stand convicted.

SEC. 56. The plea of benefit of Clergy is not receivable in this State, and the distinction between murder and petit treason is abolished, and the last named offence shall be prosecuted and punished as murder.

SEC. 57. Every offence which is punishable by death or by confinement to hard labor in the Penitentiary, either absolutely or as an alternative, is a felony; every other offence is a misdemeanor.

SEC. 58. All offences known to the common law of England as now practised and understood, which are not provided for in this or the other statutes of this State, shall be punished by fine or imprisonment in the county jail, or both, at the discretion of the jury.

SEC. 59. A common law offence for which punishment is prescribed by statute, shall be punished only in the mode prescribed.

SEC. 60. The commission of a felony shall not stay or merge any civil remedy.

SEC. 61. An accessory, either before or after the fact, may,

whether the principal felon be convicted or not, or be amenable to justice or not, be indicted, convicted and punished in the county where he became accessory, or in which the principal felon might be indicted.

SEC. 62. No person who is not jointly tried with the defendant shall be incompetent to testify in any prosecution by reason of interest in the subject matter thereof.

SEC. 63. In a criminal prosecution other than for perjury, evidence shall not be given against the accused of any statement made by him as a witness on a legal examination.

SEC. 64. When a person is convicted of two or more offences before sentence is pronounced for either, the confinement to which he may be sentenced upon the second, or any subsequent conviction, shall commence at the termination of the previous term or terms of confinement.

SEC. 65. All allegations in an indictment or other accusation which are unnecessary to be proved, may be omitted.

SEC. 66. No indictment or other accusation shall be quashed or deemed invalid for omitting to set forth that it is upon the oaths of the jurors, or upon their oaths and affirmation, or for the insertion of the words "upon their oaths" instead of "upon their oath," or for not alledging that the offence was committed "within the jurisdiction of the Court," when the averments show that the case is one of which the Court has jurisdiction, or for the omission or misstatement of the title, occupation, estate or degree of the accused; or of the name or place of his residence; or for omitting the words "with force and arms," or the statement of any particular kind of force and arms; or for omitting to state, or stating imperfectly the time at which the offence was committed, when time is not the essence of the offence; or for failing to allege the value of an instrument which caused death, or that it was of no value; or for omitting to charge the offence to be "against the form of the statute" or "statutes;" or for the omission or insertion of any other words of mere form or surplusage.

SEC. 67. No indictment or other accusation shall be abated for any misnomer of the accused, but the court may, in case of misnomer appearing before or in the course of a trial, forthwith cause the indictment or accusation to be amended according to the fact.

SEC. 68. In cases of misdemeanors, no exception for defect or want of form in the presentment or other accusation shall be allowed so as to dismiss the prosecution; but the District-Attorney may amend the same under the direction of the court according to the right of the case.

SEC. 69. Judgment in any criminal case after verdict, shall not be arrested or reversed upon any exception to the indictment or other accusation, if the offence be charged with sufficient certainty for judgment to be given thereon according to the very right of the case.

SEC. 70. There shall be no discontinuance of any criminal prosecution by reason of the failure of the court to award process or to enter a continuance on record.

SEC. 71. A person indicted for felony shall be personally present during the trial. If when arraigned, any person will not plead or answer, and do not confess his guilt, the court shall have the plea of not guilty entered, and the trial shall proceed as if the accused had put in that plea.

SEC. 72. Every person convicted of a misdemeanor as defined in this act, who shall be convicted a second time or oftener for a like offence, shall be liable to at least double the penalty which may have been adjudged against him on the first conviction.

SEC. 73. All recognizances and bonds to answer for any breach of a criminal statute, breach of the peace, to keep the peace, or in any case where a recognizance may be necessary in the administration of the criminal law, shall be made payable to the State of Texas.

SEC. 74. A person in prison on a criminal charge shall be discharged from imprisonment, if he be not indicted or otherwise accused for trial before the end of the first term of court at which he is held to answer, unless it appear to the court that material witnesses for the State have been enticed or kept away, or prevented from attending by sickness or inevitable accident.

SEC. 75. All misdemeanors shall be prosecuted by indictment or other accusation within two years after the commission of the offence, and not after. All felonies, except murder, manslaughter, treason, rape, robbery from the person and burglary, shall be prosecuted by indictment within five years after the commission of the offence, and not after; and murder, manslaughter, treason, rape, robbery and burglary shall be prosecuted within ten years after the commission of the offence, and not after.

SEC. 76. The time limited for the prosecution of an offence shall not be construed to relieve any offender who fled from the State, or secreted himself so that he could not be found, but the time of his absence from the State or secretion of himself shall be left out in the computation of the time of limitation.

SEC. 77. Criminal process from any court, whether original, mesne or final, may be directed to the Sheriff of any county; several writs of *capias* may be directed in the same case against the same person at the same time, or different times, to officers of different counties.

SEC. 78. When process of arrest in a criminal prosecution is issued from a court during its session, either against a party accused or a witness, the officer to whom it is directed or delivered may execute it in any part of the State.

SEC. 79. In a prosecution for grand larceny, if it be found that the thing stolen is of less value than twenty dollars, the jury may find the accused guilty of petit larceny, and in a prosecution for petit larceny, though the thing stolen be of the value of twenty dollars or more, the jury may find the accused guilty; and in either case he shall be sentenced for petit larceny.

SEC. 80. On an indictment for felony, the jury may find the accused not guilty of felony, but guilty of an attempt to commit such felony; and where the punishment is not otherwise provided for, the person so convicted may be punished at the discretion of the jury, by fine and imprisonment in the county jail, or either, or by confinement in the Penitentiary not less than one nor more than two years.

SEC. 81. No offence committed, and no penalty or forfeiture incurred previous to the time this act shall take effect, shall be affected thereby, except that when any punishment, forfeiture or penalty shall have been mitigated by the provisions of this act, such provision shall apply to and control any judgment to be pronounced upon the offender.

SEC. 82. When appeals shall be taken after conviction, in cases of misdemeanor as defined by this act, the defendant may enter into recognizance with sufficient security in such sum as the District Court may require, conditioned that the defendant will appear at the next term of the District Court, and from term to term thereafter, then and there to abide whatever judgment or decree the Supreme Court may render; and if the defendant fail to appear according to the terms of such recognizance, proceeding shall be had thereon as in ordinary cases, for the purpose of forfeiting such recognizance; but if the defendant neglect to give such recognizance, the court shall commit such defendant to jail until such recognizance is given, or until he shall be discharged by due course of law.

SEC. 83. When appeals shall be taken by the defendant after conviction in the District Court, in cases of felony as defined

by this act, the Judge of the District Court before whom such conviction shall be had shall remand the prisoner to the jail of the county where he may have been tried, or in case the jail of said county be unsafe, then to the jail of the nearest county which is safe.

SEC. 84. That criminal causes may be continued by operation of law or by consent of parties.

SEC. 85. That trial in criminal cases may be postponed for sufficient cause shown by the accused and supported by affidavit. On the first application to postpone trial for the want of testimony material to the case, such testimony and due diligence to obtain the same shall be shown. On the second application to postpone trial for the want of testimony material to the case, such testimony, diligence to obtain the same, the cause of failure if known, that the testimony cannot be obtained from any other source, and if it be the testimony of an absent witness, the name, residence, and what is expected to be proven by the witness, shall be shown; and the court shall have the power to postpone trial on application made by the accused for any other sufficient cause, to be determined by the court.

SEC. 86. That the court shall have power to postpone trial at the instance of the District Attorney, for such cause as the court may deem sufficient.

SEC. 87. That every person of sound memory and discretion, who shall unlawfully kill any reasonable creature in being within this State, with malice aforethought, either express or implied, shall be deemed guilty of murder.

SEC. 88. That every person of sound memory and discretion, who shall unlawfully aid, abet or instigate the killing of any reasonable creature in being within this State, with malice aforethought, either express or implied, shall be deemed guilty of murder.

SEC. 89. That this act shall take effect from and after the first day of May, A. D., eighteen hundred and fifty-four, and after that date, all laws and parts of laws conflicting with the provisions of this act shall be repealed.

Approved, February 9, 1854.